

APPEAL NO. 021028
FILED JUNE 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 21, 2002, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. The claimant's appeal asserts that these determinations are against the great weight of the evidence and that the hearing officer has simply ignored all the medical and other evidence and made his own medical judgment about the claimed injury. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant testified that on _____, while working in the employer's store, she bent over to pick up some lingerie on the floor and as she straightened back up, she felt a "pop" in her lower back on the left side, and subsequently had pain and stiffness in that area. She stated that she finished her shift and that before she left the store to go home, she told Ms. W, her supervisor, that she had hurt her back in that manner. The claimant presented statements from coworkers which corroborate the claimant's account of her injury and indicated she has been taken off work and receiving chiropractic adjustments to her back three times a week. Ms. W, however, testified that the claimant did not report a job-related injury or any injury to her on _____, but several days later told her she had hurt her back at home. The claimant contended that Ms. W testified as she did in order to save her job because, as a manager, she would be in trouble if she had placed the claimant in harm's way at work. The carrier contended that this case comes down to the credibility of the claimant and Ms. W.

It was the claimant's burden to prove by a preponderance of the evidence that she sustained the claimed injury and that she had disability, as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ.

App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). It was within the province of the hearing officer to find the testimony of Ms. W more credible and to resolve the substantial conflicts and inconsistencies in the evidence against the claimant.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge